another and materially different process, such as storing or transferring a liquid sample.

In accordance with the Examiner's restriction requirement, Applicant provisionally elects Group I (Claims 1-12) for prosecution.

While electing Claims 1-12 in compliance with the Examiner's restriction requirement, Applicant hereby traverses the basis for said requirement. Applicant respectfully notes that the claimed apparatus in Claims 1-12 cannot be used for storing or transferring a liquid sample, as suggested, for a number of reasons, among them:

First, each embodiment of the apparatus according to Claims 1-12 requires the inner tube 3 to be liquid connected to a negative pressure source in order to be functional. Without connecting the upper end 5 of inner tube 3 to a negative pressure source, liquid in the inner tube will drip out of the open bottom end 13 of the inner tube 3 and through the probe end 11 of the outer tube 7. Thus if the apparatus were to be disconnected from the peripheral apparatus according to the claimed methodology of Claims 13-18, the take-up device of Claims 1-12 would be incapable of retaining liquid, and would therefore be useless for either storage or transportation of a liquid.

Second, if the apparatus of Claims 1-12 were to be used for storage or transportation of a liquid, in order to hold a liquid, it would have to have its upper and lower ends closed off and neither Applicant's disclosure nor the claims suggest that any such "closing off" element exists.

Third, independent Claim 1 defines "an outer tube" having a "liquid connection ... adapted to receive a chemical reagent under pressure". Independent Claim 7 has similar language. It is the mixture of the sampled liquid with the reagent under pressure that flows up the inner tube 3. Without the claimed pressure connection to a reagent source, the claimed take-up device cannot function as claimed, ie. no sampled liquid and reagent can be "mixed adjacent said inner tube open end and within said outer tube take-up end" and flow "within said inner tube in a direction away from said open end" as claimed.

Fourth, the liquid sample take-up device, as claimed and as suggested in the foregoing paragraph, does not hold any liquid in a static mode. As mentioned, whether the outer take-up end 11 is immersed in liquid to be sampled or open to ambient air, there is always a constant flow of liquid (either sampled liquid and reagent or reagent with air bubbles), flowing upwardly in inner tube 3. As such, this characteristic of the claimed invention precludes its use as a liquid storage or transportation device. Moreover, if, as the official action suggests, the claimed take-

up device may be used for transportation of a liquid (for one location to another), it is important to realize that the liquid to be sampled, such as that in container 39 show in Figure 4 (i.e. the liquid sample) is not the same liquid (i.e., a mixture of the sampled liquid and a reagent) that is detected and/or analyzed by the detector 37. Therefore, it cannot be said that the apparatus of the present invention simply transports a liquid from one location to another.

Fifth, no sampled liquid passes through the annulus 19 (the space between the inner tube 3 and outer tube 11) and therefore outer tube 19 would serve no purpose if the claimed device was simply used to store or transport liquid within the inner tube 3.

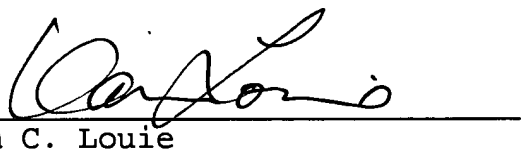
The extremely close nexus between the claimed device and methodology makes it abundantly clear that the liquid take-up device cannot be used in a "materially different process" than that claimed in the method Claims 13-18.

While an election has been made for Claims 1-12, Applicant believes that Claims 13-18 should remain in this application for prosecution as well.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely

filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O Box 1450, Alexandria, VA 22313-1450 on

June 18, 2004
(Date of Deposit)

Lonnie Louie
(Name of Person Signing)

(Signature)

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(Date)